

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **05-3893**

UNITED STATE OF AMERICA

VS.

JAMES C. CARTER

(W. D. Pa. Crim. No. 02-cr-00011)

Present: SLOVITER, MCKEE AND FISHER, CIRCUIT JUDGES

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellee's motion for summary action; and
- (3) Appellant's response to motion for summary action and "motion for equitable relief and other lawful entitlements and considerations"

in the above-captioned case.

Respectfully,

Clerk

MMW/JJT/je/clw

O R D E R

Appellant filed a document in the District Court titled, in part, "Notice of Appeal and Motion to Withdraw Guilty Plea with Court Vacating Sentence Imposed 2/3/03 for Violation of Plea Agreement . . . and new sentence imposed . . ." The document also states "this Court has jurisdiction pursuant to U.S.C.A. 28 § 2241 and U.S.C.A. 28 § 2255. . ." To the extent that Appellant's document is construed as a notice of appeal from Appellant's judgment of sentence entered on February 3, 2003, the appeal is dismissed for lack of appellate jurisdiction, as the notice of appeal was untimely filed. See Fed. R. App. P. 4(b)(1)(A). In addition, we have already conducted direct appellate review of Appellant's sentence. See United States of America v. James C. Carter, No.

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03-1385 (order entered on Nov. 5, 2003). To the extent that Appellant seeks to appeal from the District Court's order entered July 26, 2005, the District Court's order is summarily affirmed, as the appeal presents no substantial question on review. See 3<sup>rd</sup> Cir. LAR 27.4; I.O.P. 10.6.

It appears that Appellant may have been attempting to file a motion in the District Court to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Such a motion is properly brought in the sentencing court. See 28 U.S.C. § 2255 ¶ 1. In the interest of justice, we will transfer the motion back to the District Court for further proceedings, including the required notices under United States v. Miller, 197 F.3d 644 (3d Cir. 1999). See 28 U.S.C. § 1631.

By the Court,

/s/ Dolores K. Sloviter  
Circuit Judge

Dated: November 9, 2005  
CLW/cc: Mr. James C. Carter  
Robert L Eberhardt, Esq.  
Laura S. Irwin, Esq.